

STATE OF INDIANA
COUNTY OF LAKE

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IN THE LAKE SUPERIOR COURT
CAUSE NO.: 45D10-0607-PL-00096

STATE OF INDIANA,

Plaintiff,

v.

DAVID REUBEN SROGE, individually
and doing business as CLARITY POOLS
AND SPAS,

Defendant.

THOMAS R. PHILPOT
CLERK LAKE SUPERIOR COURT

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DEC 14 2007

Thomas R. Philpot
CLERK LAKE SUPERIOR COURT

MOTION FOR DEFAULT JUDGMENT

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Matt Light, pursuant to Trial Rule 55 of the Indiana Rules of Trial Procedure, respectfully moves the Court to enter a Default Judgment against the Defendant, David Reuben Sroge, individually and doing business as Clarity Pools and Spas, and in support states:

1. On July 17, 2006, the Plaintiff filed its Complaint for Injunction, Costs, and Civil Penalties against the Defendant.
2. Service was made by the Court sending the complaint and summons via certified mail to Defendant's residence on July 29, 2006, and the certified mail card being returned to the Court on August 1, 2006.
3. More than twenty-three (23) days have elapsed since Defendant was served with Plaintiff's complaint.
4. Defendant has failed to file an answer, plead or request an extension of time in which to answer Plaintiff's complaint.
5. Defendant is not an infant, incompetent, or in military service.

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6. Plaintiff filed a Motion for Default Judgment against Defendant on January 4, 2007, and the Court denied Plaintiff's Motion based on Defendant's pending bankruptcy petition (file 06-61618-kl) in the United States Bankruptcy Court for the Northern District of Indiana. The Court's denial Order stated that "proceedings in this case are stayed until such time as the Plaintiff obtains leave of the bankruptcy court to proceed or the Defendant's bankruptcy case is dismissed."

7. Defendant's bankruptcy petition was dismissed by the bankruptcy court on December 5, 2007 for "material default by the Debtor as to the terms of the Plan." A true and correct copy of the bankruptcy court's dismissal order is attached to and incorporated by reference as Exhibit "A."

WHEREFORE, Plaintiff, State of Indiana, requests the Court enter a default judgment against the Defendant, permanently enjoining the Defendant from the following:

- a. In the course of entering into home improvement transactions, failing to provide a completed home improvement contract, including each of the provisions required by Ind. Code § 24-5-11-10(a), to the consumer before it is signed by the consumer;
- b. representing expressly or by implication that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should know it does not have;
- c. representing expressly or by implication that the Defendant is able to start or complete a home improvement or consumer transaction within a stated period of

- time, or when no time period is stated, within a reasonable time, when the Defendant knows or should reasonably know that he cannot;
- d. soliciting to engage in a consumer transaction without a permit or other license required by law;
 - e. engaging in a consumer transaction without a permit or other license required by law;
 - f. violating any provision of the Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.*, or the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*;

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

- a. cancellation of the Defendant's unlawful contracts with Daniel Benko and Antonio Enriquez, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- c. on Count III of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- d. on Count III of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer

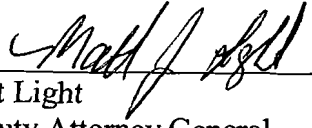
Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;

- e. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
INDIANA ATTORNEY GENERAL
Attorney No. 4150-64

By:


Matt Light
Deputy Attorney General
Attorney No. 25680-53

Office of the Attorney General
Indiana Government Center South, 5th floor
302 West Washington Street
Indianapolis, IN 46204
(317) 232-4774